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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,772	01/23/2002	Jonathan Kost	5146-03	4588
7590	06/16/2004		EXAMINER	
McCormick, Paulding & Huber City Place II 185 Asylum Street Hartford, CT 06103-3402			THANH, QUANG D	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 06/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/056,772	KOST, JONATHAN
	Examiner	Art Unit
	Quang D. Thanh	3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 18 March 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-23 and 26-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 3-5, 10-20 and 27-35 is/are allowed.
- 6) Claim(s) 1, 2, 6-9, 21-23, 26 and 36-40 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

This office action is responsive to the amendment filed on 03/18/2004. As directed by the amendment: claims 3-5, 10-20, 26-31, and 33-36 were amended; and claims 24-25 were cancelled. Thus, claims 1-23, and 26-40 are presently pending in this application.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-2, 6, 26, and 36-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshio et al. (JP 410094576A) in view of Yamasaki et al. (5,183,034).
3. Re claims 1 and 36-37, Yoshio discloses a massage device and a method for the treatment of lower back pain (figs. 11 a-b), the device comprising: a stationary base (case 2A having a horizontal plate as shown in fig. 12a); two laterally spaced massage heads 20 (fig. 1), the massage heads being operatively connected to the base and protruding vertically from the base (fig. 12); a means (releasable locking mechanism 26-29 and the inclined plane 2B of case 2A as shown in fig. 12a) for allowing a user to selectively position the massage heads vertically relative to one another and relative to the horizontal plate of the base; a

means (guide groove 17, fig. 3, abstract) for positioning the massage heads laterally relative to one another; the area of contact are the outer sides of the muscles that run along both sides of the spine (fig. 11a-b shows heads 20 that run along both sides of the spine), except for each massage head having vibration means. However, Yamasaki teaches a portable massager comprising two laterally spaced massage heads 35, and each head having a vibration means motor 36. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the Yoshio's device, to include a vibrating motor, as taught by Yamasaki, for the purpose of providing microvibration that can be imparted to the massaging head (col. 3, lines 17-22), thus would produce a more desirable concentrated massaging effect to the applied areas.

4. Re claims 2, 6 and 26, Yamasaki discloses each massage head has a motor housing enclosing the vibrations means 36, and Yoshio discloses the housing includes a tube 19 having a bottom end and a top end, a bottom cap 29 disposed at the bottom end, a convex top cap 23 disposed at the top end opposite the bottom cap, and the vibrations means is disposed within the housing (fig. 6).

5. Claims 7-9, and 38-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshio/Yamasaki and further in view of Wu (6,511,446).

6. Re claim 7 and 39, Yoshio/Yamasaki discloses the claimed invention except it does not include any heating means. However, Wu discloses a massage bead structure having a vibrator 4 enclosed in a housing (fig. 1), the housing includes a tube 1 having a bottom end and a top end, a bottom cap 2 disposed at the bottom end,

a convex top cap 9 disposed at the top end opposite the bottom cap, and the vibrations means 4 and heat generator 3 are disposed within the housing (fig. 1). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the Yoshio/Yamasaki's device, to include a heating means, as suggested by Wu, for the purpose of providing an enhanced combined therapeutic effect of vibrating massage and heating effect simultaneously when desired.

7. Re claims 8-9, Wu further teaches that the means for heating the top cap is electrical resistance wire (col. 2, lines 18-24) and the top cap composed of a heat conducting material (col. 3, lines 14-19).

8. Re claims 38 and 40, the duration of treatment is considered to be an obvious choice that a skill artisan can be readily able to determine based upon individual preferences and medical conditions.

9. Claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshio/Yamasaki and further in view of Murtonen (5,113,852). Yoshio/Yamasaki discloses the claimed invention except for a controller for modulating the vibration frequency and that it is silent regarding the vibrating frequency of about 100 Hz. Murtonen teaches a device for applying vibrations to the human body utilizing a vibrating frequency of a preferable range 30-100 Hz (col. 4, lines 12-18). Murtonen also teaches that the device comprises a controller regulator 1 for modulating the vibration frequency (col. 4, lines 12-18). Therefore, it would have been obvious to one of

ordinary skill in the art at the time of invention was made to modify Yoshio/Yamasaki 's device, to include a controller that would operate the vibration at a frequency of about 100 Hz, for the purpose of generating optimal intensity pulses suitable for vibrating massage therapy to the human body.

Allowable Subject Matter

10. Claims 3-5, 10-20, and 27-35 are allowed.

Response to Arguments

11. Applicant's arguments with respect to claims 1-2, 6-9,21-23, 26, and 36-40 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (703) 605-4354. The examiner can normally be reached on Monday-Thursday & alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (703) 308-2698. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for regular and After-Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Quang D. Thanh
Patent Examiner
Art Unit 3764
June 14, 2004

(QT)


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